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January 29, 2019

The Honorable Kiyo A. Matsumoto  
The United States District Court for the  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: Murdock, et. al. v. United Airlines, Inc. et. al.  
Civil Action No. 1-18-CV-06741 KAM/SMG  
Docket 10-0845

Dear Judge Matsumoto:

We represent the Plaintiffs Eric Murdock and Brenda Williams in the above referenced matter. In response to the Defendant United Airlines, Inc.'s ("Defendant") recent request seeking permission to file a motion to dismiss, please be advised that we will strenuously object to the breath and scope of the motion proposed by the Defendant. Moreover, and given the facts at issue and the necessity of discovery in this matter, the Defendant must be precluded from any attempt to dispose of this matter which is brought in order to hinder the Plaintiffs from obtaining necessary discovery.

Notwithstanding the Defendant's attempt to classify this action as a mere quarrel between its cabin staff and passengers, the facts herein fully supports the Plaintiffs' claims of racial discrimination and denial of equal access to accommodations. Specifically, Defendant denied Mr. Murdock, who is African American, access to a seat, which provided more leg room, offered to him by another passenger who had purchased that very seat. Notwithstanding, the flight attendant, known at this time as "JANE DOE," denied him access to the seat even though she was fully aware that the other passenger voluntarily switched with the Plaintiff Murdock.

Approximately one-half hour into the flight, a Caucasian female moved into an empty seat in the same row without objection from Defendant JANE DOE who instead provided this woman beverage service. Upon seeing this exchange, Mr. Murdock went back to the same row and sat next to the Caucasian female. At this point, JANE DOE again came back to the row and demanded that Mr. Murdock go back to his original seat. When Plaintiff Murdock asked Defendant JANE DOE why she had allowed the Caucasian woman to sit in the emergency row, and Defendant JANE DOE told him that it was none of his business, although clearly the only reason was his race.

Plaintiff Williams, who is also African American and was travelling independently of Plaintiff Murdock, had gone to the rest room when Plaintiff Murdock moved back to the emergency exit row seat and was returning when she observed the Defendant JANE DOE's confrontation with Plaintiff Murdock. Plaintiff Williams concerned about Defendant JANE DOE's aggressive and disrespectful attitude asked her why she was being rude to Plaintiff Murdock. Defendant JANE DOE aggressively told Plaintiff Williams that it was none of her

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business. Defendant JANE DOE then began yelling at Plaintiff Williams and accusing Williams of recording Defendant JANE DOE on her cellular telephone. Though Plaintiff Williams was holding her phone she was not recording her. Despite being repeatedly told by Plaintiff Williams that she was not recording her, Defendant JANE DOE demanded, in a very hostile and aggressive manner that Plaintiff Williams surrender the phone.

When Plaintiff Williams refused, Defendant JANE DOE extended her arm and leaned into the row about half way across and demanded with a threatening and intimidating voice, “erase the video now, or give me your phone! It’s against the law to record me!”

The actions of Defendant JANE DOE placed Plaintiff Williams in imminent fear of an unwanted, offensive physical contact. Plaintiff Williams repeatedly told Defendant JANE DOE that there was no recording. Defendant JANE DOE however continued to yell at Plaintiff Williams and made as if to grab the phone. Defendant JANE DOE finally left without taking Plaintiff Williams’ phone.

Shortly thereafter, another flight attendant asked Plaintiff Murdock if he would consent to return to his original seat. While this flight attendant was talking to Plaintiff Murdock, Defendant JANE DOE returned. She leaned over and placing her head within inches of the Plaintiff Murdock and spoke. Plaintiff Murdock asked her to get out of his personal space. The actions of Defendant JANE DOE placed Plaintiff Murdock in imminent fear of an unwanted, offensive physical contact. Plaintiff Murdock returned to his original seat for the remainder of the flight.

Thereafter during the beverage service, Defendant JANE DOE in a snide and condescending tone asked Plaintiff Murdock if he wanted a beverage or if he was “going to boycott?” This was an obvious racial slur as it was meant to reference the African American civil rights struggles in the mid-20<sup>th</sup> Century.

After the Plaintiff landed at Newark International Airport, the passengers were instructed by the pilot to remain seated due to a security situation. The Plaintiffs were then escorted off the plane first and held by and questioned by the TSA. This exchange and removal from the plane was prompted by Defendant JANE DOE and meant to humiliate the Plaintiffs.

Plaintiffs’ Complaint clearly states claims on which relief can be granted to include but not limited to Section 1981 of Title 42, United States Code,

Section 1981 provides, in relevant part: “All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens. . .”; 42 U.S.C. § 1981(a).

“To establish a claim under § 1981, a plaintiff must allege facts in support of the following elements: (1) the plaintiff is a member of a racial minority; (2) an intent to discriminate on the basis of race by the defendant; and (3) the discrimination concerned one or more of the activities enumerated in the statute *Mian v. Donaldson, Lufkin & Jenrette Securities Corp.*, 7 F.3d 1085, 1087 (2d Cir. 1993).

Given the facts herein, the Plaintiffs have certainly met their burden under the statute and

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the claim must proceed.

As to the Defendant's position as to the remainder of the Plaintiffs' claims, witness accounts and the receipt of reports through the discovery process will provide the evidentiary merit to allow those claims to proceed as well. The Plaintiffs are entitled to know what information, Defendant JANE DOE provided to the flight crew and what statements both oral and written were prepared in response to this incident. The Plaintiff is also entitled to all communication between Defendants and the TSA to determine why the TSA escorted the Plaintiffs off the plane and detained them in the terminal. This information is critical, and the Defendant should not be given any cover to hide this information from the Plaintiffs.

Based on the foregoing, the Plaintiffs would oppose the motion to dismiss suggested in the Defendant's application and ask that it be denied in its entirety. If Defendant decides to proceed with its proposed motion, Plaintiffs have no objection to the briefing schedule proposed.

Respectfully,



Gary Port

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